

DECLARATION OF C.R. ADDY, ESQ.

EXHIBIT H

G.A. No. 3264 of 2006
D.O.T. No. 343 of 2006
A.S. No. 11 of 2006
T. No. 196 of 2006
T. No. 414 of 2006
To the High Court at Calcutta
Original Side

Unitai Line Public Co. Ltd. & Anr.
Versus
R.D. Logistics Pvt. Ltd. & Ors.

Before:
The Hon'ble Justice Girish Chandra Gupta
AND
The Hon'ble Justice Manik Mohan Sarkar

Date: 2nd November, 2006

Mr. S.N. Mondkarjee, Sr. Adv.,
Mr. Ramnako Banerjee, Adv.,
Mr. Satnaray Banerjee, Adv.,
Mr. Suvojit Roy, Adv.,
appeared for the Appellants
Mr. Subrata Sarkar, Sr. Adv.,
Mr. Tinku Bose, Adv.,
Mr. Anil Roy, Adv.,
appeared for the Respondent nos. 1 and 3
Mr. Debak Mitra, Sr. Adv.,
Mr. Anshu Ghose, Adv.,
appeared for J.M. Boro & Co.

Distated Order

The Court: On 26th September, 2006, an order arresting the vessel M.V. Chitali
Maven was passed by the Learned Trial Court at the instance of the plaintiff respondent
who alleged that the defendant no. 3 was the demise charterer and/or temporary owner

2

of the vessel M.V. Uthai Navar. It was also alleged that the vessel M.V. Uthai Navar is a sister ship of the vessel M.V. KAL. After the order was given effect to, the ship was actually arrested. The defendant no. 1 on 30th October, 2006 applied for vacating the order dated 26th September, 2006. The Learned Judge refused to vacate the order on the ground that the defendant no. 3 in the meanwhile had appeared and offered to secure the claim of the plaintiff to the tune of Rs. 1 crore 24 lakhs but ultimately did not do so. The Learned Trial Judge has issued directions for filing affidavits. Aggrieved by the order, the defendant no. 1 has come up before this Court. Mr. Bhakshjee, Learned Senior Advocate appearing for the appellant defendant no. 1 submitted that under Article 3 and 6 of the International Convention on the Arrest of Ships, 1999, the vessel should not have been arrested. Moreover, no document in support of the allegation that M.V. Uthai Navar is a sister ship of M.V. KAL was adduced. Nor was any evidence adduced by the plaintiff in its interlocutory application to show that the defendant no. 3 was the disponent owner of the vessel in question. Mr. Bhakshjee drew our attention to documentary evidence in order to show that M.V. Uthai Navar has no sister ship. He also drew our attention to documents to show that the defendant no. 3 was only a time charterer and not a disponent owner in respect of the vessel.

Mr. Sarkar, Learned Senior Advocate appearing for the plaintiff respondent submitted that the defendant no. 3 is colluding with the defendant no. 1. The defendant no. 3 appeared before the Trial Court, offered to furnish security, did not ultimately do so but filed a proceeding in the Court of Appeal and has obtained an order attaching more than 4 lakhs dollars of the plaintiff no. 1. Mr. Sarkar drew our attention to the copies of

the pleadings used in the Courts in America wherein there is an allegation that the defendant no. 3 is interested in the vessel which has wrongfully been arrested by the plaintiff and on that basis has obtained an order attaching more than a lakh rupees. Mr. Sarkar further submitted that there is no question of vacating the order of arrest because the matter is yet to be heard and goes into on merits by the Trial Court. He also submitted that even if the order of arrest is vacated, the order insofar as the same relates to the bunkers on board should be sustained because the bunkers do not belong to the defendant no. 1 but they belong to the defendant no. 3.

We have heard and considered the submissions made by the Learned Counsel appearing for the parties. There is no dispute as regards the fact that an document in support of the allegation that the defendant no. 1 was interested in the defendant no. 1 was produced before the Trial Court. Mere allegation is not enough in the absence of adequate evidence in support of the allegation as to the defendant no. 1 being the owner ship of M.V. IKAL or as regards the disputed ownership of the vessel M.V. Ushai because of the defendant no. 3, an order of arrest could not have been passed. The fact that the moneys belonging to the plaintiff no. 1 have been attached by the defendant no. 3 do not really advance the case of the plaintiff because there is nothing to show before us that the defendant no. 1 is in any way liable for the dues owed by the defendant no. 3. The Convention relied upon by Mr. Mukherjee also appears to support the case of the appellant. There are all, however, prima facie views expressed by us and shall not stand in the way of the Trial Court taking different view after the affidavits are exchanged. For

4

ends of justice and to secure the appellant from possible loss which is likely to result from
 the granting of the order of arrest, we pass the following order:-

In the event if Bank Guarantee for a sum of Rs 50 lakhs is furnished by the
 plaintiff within a week from date the order dated 26th September, 2006 shall be
 continued. In that event the Learned Trial Court shall try to dispose of the application as
 early as possible after the affidavits are exchanged. In default of furnishing such security,
 the order dated 26th September, 2006 shall stand vacated.

We are unable to spare the bankers because the appellant has been exposed to loss
 and damage by reason of the order of arrest. In the event the matter comes to an end here
 and no security is furnished, the appellant will have to suffer to file a suit to recover the
 loss and damage for it. We, therefore, refrain from passing any order as regards bankers.
 Thus in default of furnishing security, the order dated 26th September, 2006 as extended
 from time to time shall stand vacated in its entirety.

There will be no order in terms of prayer (3).

All undertakings are discharged.

This appeal and the application are both disposed of by treating the same as per the

day's list.

Registrar, Marshall and all parties are to set on a sworn signed copy of the
discreet order on the usual undertaking.

sd/
Chen
08/14/06

W. L. ...
8/11/06

Registrar, Registrar
U.S. Court, D.C. District

sd/ Girish Chandra Gupta - i
And

sd/ Mark Mohan Sanyal